IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No 6968 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgment? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

THASARA VILLAGE PANCHAYAT THROUGH INCHARGE SARPANCH
Versus
P.D.VAGHELA OR HIS SUCCESSOR IN OFFICE

Appearance:
MR BS PATEL for the Petitioner.
MRS RANJAN B PATEL for Petitioner No. 1
Ms.Sonalben Vyas, Assistant GOVERNMENT PLEADER, for Respondent No. 1
MR HS MUNSHAW for Respondent No. 2-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 03/10/2002

ORAL JUDGEMENT

1. Is it the mandate of the Legislature that moment a Panchayat fails to pass budget on or before 31st March of the current year, the said Panchayat is required to be dissolved / superseded, or whether any discretion is left with the State Government not to effect dissolution or supersession of the said Panchayat even if such budget is not passed within the stipulated time, is the question

which arises for consideration of this Court in this Special Civil Application.

2. Election of Thasara Village Panchayat, the petitioner herein, took place in January, 2002. On the basis of the election of the Village Panchayat, the first meeting of the Panchayat was held on 21st January, 2002. Thereafter, the Sarpanch convened the meeting for approving the budget estimate on 27th March, 2002. However, in the aforesaid meeting, the Panchayat failed to pass the budget. Therafter, the Sarpanch again called the meeting on 5th April, 2002, for approving the Budget. Even in the said meeting, the budget could not be approved. On May 13, 2002, the petitioner-Panchayat passed a No Confidence Motion against the Sarpanch and, thereafter, on 22nd May, 2002, the Village Panchayat, on a requisition of 23 members, called a meeting for passing the Budget and the Budget was passed in the said meeting. On the very same day, i.e. 22nd May, 2002, the Panchayat received a notice dated 20.5.2002 issued by the Development Commissioner, under the provisions of Section 253 of the Panchayats Act. By the aforesaid notice, the petitioner-Panchayat was asked to show cause as to why the Panchayat should not be dissolved under Section 253 of the Act for not passing the budget within the stipulated time, i.e. on or before 31st March, 2002.

3. On behalf of the petitioner-Panchayat, In-charge Sarpanch gave reply dated 10th June, 2002. In her reply, she pointed out that since the Sarpanch had not taken care of various factors in the Budget, ultimately, No Confidence Motion was passed against him and, thereafter, after calling a special meeting on 22.5.2002, the budget was ultimately passed by the Panchayat. It is also pointed out in the reply to the show cause notice that at the time of receiving the show cause notice, the budget was already passed by the Panchayat and, therefore, the notice in question may be withdrawn. It is also pointed out in the reply that the Elected Body has taken charge only about four months back and in that view of the matter, the Elected Body may be permitted to complete its term.

4. The Development Commissioner thereafter, by his order dated 26.6.2002, came to the conclusion that there is a mandatory provision for passing the budget on or before 31st March of the current year under the provisions of Section 116(3) of the Act. The Development Commissioner came to the conclusion that the provision of Section 116(3) is a mandatory provision and that the

decision of the High Court in the case of Ramanlal Manilal and another v. A.R. Banerji, 1991(2) GLR 801, is a decision under the old Act of 1961, wherein there was no such mandatory provision which is now provided under Section 116(3) of the Act of 1993. In view of the aforesaid reasoning, the Development Commissioner, Gujarat State, Gandhinagar, by the impugned order, passed an order under Section 253 of the Act, dissolving the Thasra Village Panchayat under the provisions of Section 253 of the Act. Subsequently, an Administrator has been appointed for managing the affairs of the said Panchayat. The aforesaid order of the Development Commissioner is impugned in this petition and this petition is filed by the In-charge Sarpanch of Thasra Village Panchayat, challenging the said order of dissolution, on various grounds.

5. Mr.B.S. Patel, appearing for the Panchayat, submitted that because of genuine difficulties, the Panchayat could not pass the Budget within the stipulated time upto 31st March, 2002 and that lapse should have been condoned by the Development Commissioner. Mr.Patel also further submitted that in view of the Division Bench judgment of this Court in Ramanlal Manilal (supra), the provision for passing budget latest by 31st March of the current year is held to be directory, and not mandatory. He submitted that, therefore, this is a fit case in which the State Government should have condoned the lapse on the part of the petitioner-Panchayat and in the facts of the case, the order of dissolution should not have been passed.

6. On behalf of the State Government, Ms.Sonal Vyas, learned AGP, has vehemently submitted that the provisions of Section 116(3) of the Act are mandatory and, therefore, it is lawful for the Government to form an opinion, as contemplated by Section 116(4) of the Act to the effect whether the Panchayat is competent to perform the duties imposed on it or functions entrusted to it under the provisions of the Act. She accordingly submitted that, moment the Panchayat fails to pass budget within the stipulated time, the Government has no option but to dissolve or supersede such Panchayat by resorting to Section 253 of the Panchayats Act. She has accordingly justified the order of the Development Commissioner.

7. Mr.Munshaw, learned Advocate, who is appearing for the District Development Officer, Kheda-Nadiad, supported the argument of Ms.Vyas, learned AGP.

8. The principal question which requires to be considered by this Court is : whether, in case a Panchayat fails to pass budget within the stipulated time, i.e. upto 31st March of the current year, that will, ipso facto, result in the dissolution or supersession of the Panchayat, or, in a given case, a discretion can be exercised by the State Government not to effect its dissolution / supersession?

In order to examine the aforesaid aspect, it is necessary to refer to certain statutory provisions under the Gujarat Panchayats Act, 1993. So far as Budget Estimate is concerned, Section 116 of the Act provides as under :-

> " ... ...
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> 116. (1) Every village panchayat shall have prepared annually on or before the 15th December of the current year of such date not later than 31st December of the current year as may be approved by the taluka Panchayat, in such form and manner as may be prescribed in this behalf a budget estimate of its income and expenditure for the next year and forward the budget estimate to the taluka panchayat on or before-
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> (a) the 31st December of the current year where the budget estimate is prepared on or before the 15th December of the Current year, or
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> (b) the 15th January of the current year where the budget estimate is prepared on or before the approval date :
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> Provided that the budget estimate shall be so prepared that at the end of the year the panchayat shall have at its credit a balance of not less than such minium amount as may be prescribed in that behalf.
>
> (2) The taluka Panchayat shall scrutinise the budget estimates and return to the Panchayat within two months of its receipt with such observations and recommendations as it may make in respect of the budget

estimate.

(3) The Panchayat shall thereupon approve the budget estimate on or before the 31st March of the current year with such modifications as it may think fit having regard to the observations and recommendations made by the taluka Panchayat under sub-section (2).

(4) Where any village Panchayat has failed to comply with the provisions of sub-section (3), it shall be lawful for the State Government to form an opinion that the Panchayat is incompetent to perform the duties imposed on it or functions entrusted to it under the provisions of this Act.

Explanation :-A village panchayat shall not be deemed to have failed to comply with the provisions of sub-section (3). If such failure has resulted on account of noncompliance by the taluka Panchayat of provisions of sub-section (2).

... ..."

Section 253, which deals with dissolution or supersession of Panchayats for default, reads as under :-

" ... ...

253. (1) If, in the opinion of the State Government, a Panchayat exceeds or abuses its powers or is incompetent to perform or makes persistent default in the performance of the duties imposed on it or functions entrusted to it under any provision of this Act or by or under any other law for the time being in force, or fails to obey an order made under this Act by the Panchayat superior thereto or by the State Government or any officer authorised by it, under this Act or persistently disobeys any of such orders, the State Government may, after consultation with the district Panchayat in the case of a Panchayat subordinate to it and after giving the Panchayat an opportunity of rendering an explanation, by

order in the Official Gazette --

(i) dissolve such panchayat, or

(ii) supersede such Panchayat for the period specified in the order :

Provided that such period shall not be longer than six months or the residual period of duration of such Panchayat whichever is less ;

Provided further that the State Government may subject to the preceding proviso from time to time after making such inquiry as it may consider necessary by an order published in the Official Gazette extend the period of supersession of such Panchayat until such date as may be specified in the order or by like order curtail the period of supersession.

(2) When a Panchayat is dissolved or superseded, all members of the Panchayat, shall from the date specified in the order, vacate their office as such members.

(3) When the Panchayat is dissolved or superseded, it shall be reconstituted, in the manner provided in this Act.

(4) If a Panchayat is dissolved or superseded--

(a) all the powers and duties of the Panchayat shall during the period of dissolution or supersession as the case may be exercised and performed by such person or persons as the State Government may, from time to time appoint in that behalf, and

(b) all property vested in the Panchayat shall during the period of dissolution or supersession, as the case may be, vest in the State Government; and

(c) on the dissolution, or, as the case may be, on the expiry of the period of supersession, the panchayat shall be

reconstituted in the manner provided in this Act, and the persons vacating office shall be eligible for re-election.

... ..."

It is required to be noted that there is no express provision in Section 116 to the effect that moment the Panchayat fails to pass budget on or before 31st March of the current year, it shall stand dissolved or superseded. Therefore, so far as Section 116 is concerned, it nowhere provides that moment budget is not passed within the stipulated time, it results in the automatic dissolution of a particular Panchayat. It is, no doubt, true that in view of the provisions of the Act of 1993, the State Government is empowered to form an opinion about the incompetence of such Panchayat to perform its duty in case it is found that the Panchayat failed to pass the budget within the stipulated time. Accordingly, the Government is entitled to form an opinion to the effect that the Panchayat has failed to pass budget within the stipulated time and, therefore, it is incompetent to perform its functions. On the basis of forming of such an opinion, naturally, powers are required to be exercised under Section 253 of the Act for the purpose of dissolution or supersession of such Panchayat. However, there is nothing in Section 116 to suggest that moment a particular Panchayat fails to pass the budget within the stipulated time, it is required to be dissolved straight away. It only enables the Government to form an opinion that such Panchayat is not competent to perform its function, on the basis of which proceedings can be initiated under Section 253 of the Act. In a given case, if a Panchayat is able to show satisfactorily that there was a genuine reason for not passing budget within the stipulated time, it is always open for the State Government to consider such ground for passing the ultimate order under Section 253 of the Act. It is, no doubt, true, as contended by the learned AGP, that under the Panchayats Act, 1961, there was no such clause (4), by which the Government was entitled to form an opinion about the incompetence of such Panchayat for not passing budget and that, now, by virtue of sub-section (4) of Section 116, the State Government is entitled to form such opinion, yet; in my view, by reading Section 116(3) and (4), it cannot be said that, moment the Panchayat fails to pass a budget, there is no other option left but to dissolve such Panchayat.

9. Mr.Patel has pressed into service a decision of this Court in Luvara Gram Panchayat v. State of Gujarat,

rendered by a learned single Judge in Special Civil Application No.6492 of 1997 on 29.12.1997. In the aforesaid judgment, which is given under the Gujarat Panchayats Act, 1993, this Court (Coram : J.M. Panchal, J.) has observed in paragraphs 7, 8 and 9 as under :-

" ... ...

7. Section 116 of the Act deals with budget estimates of village Panchayat. It provides that every village Panchayat shall have to prepare annually on or before 15th December of the current year or such date not later than 31st December of the year as may be approved by the taluka Panchayat, a budget estimate of its income and expenditure for the next year and forward the budget estimate to the taluka Panchayat on or before December 31 of the current year, where the budget estimate is prepared on or before 15th December of the current year or the 15th January of the current year, where the budget estimate is prepared on or before the approved date. Sub-section (2) requires the Taluka Panchayat to scrutinise budget estimates and return to the Panchayat the estimates with observations and recommendations. Sub Section (3) of section 116 provides that the Panchayat shall thereupon approve the budget estimate on or before the 31st March of the current year with such modification as it may think fit having regard to observation and recommendations made by the taluka Panchayat under sub-section (2).

8. The Division Bench in the case of Ramanlal Manilal and another vs. A.R. Banerji and another, 1991(2) GLR 801 has interpreted section 124 and 126 of the Gujarat Panchayats Act, 1961 which dealt with approval of the budget estimate before 31st March every year by taluka Panchayat. On consideration of scheme of the Act, the Division Bench has held that provision to approve the budget estimate before March 31 is directory and not mandatory. It is further ruled by the Division Bench that the provision to approve the budget estimate before March 31 is a directory provision not requiring strict compliance,

> and if the budget estimate is not approved, such budget estimate can be approved within reasonable time therafter depending on the facts and circumstances of the case. What is emphasised by the Court is that mere fact that the budget estimate is not approved would not necessarily lead to the conclusion that the Panchayat is incompetent to perform its functions.
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> 9. On the facts and in the circumstances of the case, it is clear that budget estimate could not be approved on March 31, 1997 although attempts to approve the same were made in the meetings of the Panchayat which were convened for that purpose on earlier dates. Thereafter, the budget estimate was got approved in the meeting which was held on April 25, 1997. The respondent No.1 has not considered the question whether the Panchayat could not get the budget estimate before March 31, 1997 for some valid reasons and whether such estimate was approved within reasonable time thereafter. While passing the impugned order, the respondent No.1 has totally ignored the principles of law laid down by the High Court in the above referred to decision. Therefore, I am of the view that the impugned order is liable to be set aside and the matter deserves to be remanded to the respondent No.1 for fresh consideration of the matter.
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> ... ..."

The learned single Judge, after considering the provisions of Section 116 of the Act and after considering a judgment of the Division Bench of this Court (supra), came to the conclusion that the provisions under Section 116 are not mandatory, but directory. The view taken by the learned single Judge in the said decision is binding on me. It is, no doubt, true, as submitted by the learned AGP, that the attention of the learned single Judge was not invited to sub-section (4) of Section 116, which gives powers to the State Government to form an opinion. However, in my view, even reading sub-section (4) of Section 116, it is not possible for me to accept the argument of the learned AGP that there is a mandatory provision for dissolving the

Panchayat moment the budget is not passed. It is, no doubt, true that the judgment of the Division Bench of this Court is in connection with the Panchayats Act, 1961 and at that time, there was no such provision regarding forming opinion, which is now incorporated in sub-section (4) of Section 116. But, in my view, in view of the aforesaid insertion of sub-section (4) of Section 116 of the Act, now, it is lawful for the State Government to resort to the provisions of Section 253 of the Act for the purpose of effecting dissolution / supersession of the Panchayat in case it is found that the Panchayat has failed to pass its budget within the stipulated time. Accordingly, while taking action under Section 253 of the Act, it is now open for the State Government to rely upon its opinion formed under Section 116(4) of the Act for coming to the conclusion that the Panchayat has failed to pass its budget within the stipulated time and, therefore, it is required to be dissolved under Section 253 of the Act. Accordingly, now, one more additional ground is available to the State Government under Section 253 for dissolving the Panchayat in case it is found that the Panchayat has failed to pass the budget within the stipulated time, but, it cannot be said that since the Panchayat has failed to pass its budget, ipso facto, it is required to be dissolved straight away and that no discretion is available with the Government to condone such lapse in a given case if appropriate reasons are given by such Panchayat for not passing the budget within the stipulated time. Sub-section (4) of Section 116 empowers the State Government to form an opinion, but in a given case, Government may or may not form such opinion about incompetence of such Panchayat if the Government is satisfied that there were proper reasons for the Panchayat for not passing the budget within the stipulated time. It is required to be noted that, in the instant case, the elected body took charge and the first meeting was held on 21st January, 2002 and, prior to that, the Administrator was in charge of the affairs of the Panchayat. In a given case, if the elected body, after the election, takes charge either in the middle of March of a current year, then, it will be too much to expect that within a few days, without application of mind, Panchayat must pass the budget before 31st March of the current year. Even on behalf of the respondents, both Ms.Sonal Vyas, learned AGP, and Mr.Munshaw, also fairly conceded that in a given case, it may happen that, as the election can be held at any point of time, the elected body may take charge even a few days prior to 31st March of the current year. In such circumstances, if it is to be presumed that moment the budget is not passed by 31st March, even the elected body, which might

have taken its birth a few days back, is required to be dissolved simply because the budget is not passed by 31st March, 2002, then, it may result into an absurd situation.

Considering the aforesaid aspect of the matter, in my view, by sub-section (4) of Section 116, the Government is entitled to form an opinion about incompetence of a particular Panchayat, in case such Panchayat fails to pass budget within the stipulated time and now, that may be one of the grounds available to the Government for taking action under Section 253. Since such ground was not available under the old Act, now this ground is made available by virtue of provision of sub-section (4) of Section 116 for taking action under Section 253 of the Act. However, it is always open for the State Government before forming an opinion whether any justifiable ground was available for the Panchayat for not passing the budget within the stipulated time. If the argument of the State is to be accepted to the effect that once the budget is not passed, the Panchayat has to be superseded and it is a mandatory provision, then, in such a case, there is no reason even to give hearing to such a Panchayat as to why the Panchayat should not be dissolved under Section 253 of the Act. The fact that the hearing aspect is contemplated under Section 253 itself suggests that there is no mandatory provision for passing budget within the stipulated time, or else, failure to pass the budget within the stipulated, time will result in automatic dissolution / supersession of a Panchayat. When there is a contemplation of hearing, it can always be presumed that there is always a discretion with the authority, because, in a given case, after giving hearing, the Government may change its opinion and may even condone the lapse on the part of a Panchayat if the Government is satisfied that there was a genuine reason for not passing the budget. Under these circumstances, even though a Panchayat is required to pass a budget by 31st March of a current year, in case it fails to do so, it is always open for the State Government to consider whether such non-passing was with or without any valid reasons. It may be mentioned that once the hearing is afforded, it is clear that it cannot be said to be a mandatory provision. Otherwise, if there is a mandate that moment budget is not passed, the Panchayat is required to be dissolved, then there is hardly any relevance for affording hearing.

Considering the aforesaid aspect, in my view, it is not a sine qua non that moment budget is not passed, the Panchayat must be dissolved and in a given case,

while forming opinion, under Section 116(4), the Government may form an opinion even in favour of the Panchayat if there are justifiable reasons given by the Panchayat for not passing such budget.

10. In order to substantiate his say that word 'shall' can be considered 'may' in a given case, Mr.Patel has relied upon the decision in Owners and Parties interested in M.V. "Vali Pero" v. Fernandeo Lopez and others, AIR 1989 SC 2206. However, for the reasons stated above, in my view, there is nothing in Section 116 to suggest that passing of budget by 31st March is a mandatory provision, and moment budget is not passed by 31st March, there is no option for the State Government but to dissolve the said Panchayat. At the cost of repetition, I may state that now, in view of insertion of sub-section (4), it is open for the State Government to form an opinion under Section 116(4) and on the basis of forming such opinion, an additional ground is available for the State Government to dissolve a Panchayat under Section 253 of the Act. Under the old Act, there was no such provision dissolving the Panchayat for not passing the budget and the Division Bench had taken the view that non-passing of budget is not a mandatory provision. Under these circumstances, it was not possible for the Government to dissolve a Panchayat if it had failed to pass a budget, but, now, in view of the provisions available under sub-section (4) of Section 116, a ground is available for the State Government to dissolve a Panchayat in case the budget is not passed within the stipulated time and thereafter, on the basis of appropriate material on record, opinion to that effect is formed. Since in the instant case, the Development Commissioner has not considered the explanation given by the Panchayat and that the view taken by the Development Commissioner is that, the moment the budget is not passed, which is a mandatory provision, the Government has no option but to dissolve the Panchayat, in my view, the said decision of the Development commissioner is required to be set aside. Even otherwise, the judgment of this Court in Special Civil Application No.6492 of 1997 is under the 1993 Act, and this Court, after considering the provisions of Section 116 of the Act, has held that such provision is directory and not mandatory, and, therefore, this petition is required to be allowed by holding that non-passing of budget within the stipulated time, ipso facto, would not result in dissolution of a particular Panchayat. Though it is for the Government to form appropriate opinion, as contemplated by sub-section (4) of Section 116, nonetheless, no automatic dissolution of the Panchayat is contemplated by Section 116 for not

passing the budget and discretion is still available with the State Government whether the Panchayat is required to be dissolved for not passing the budget within the stipulated time. That discretion is required to be exercised considering the explanation given by the Panchayat and considering the facts and circumstances of the case. The Development Commissioner, in my view, is, therefore, not right in coming to the conclusion that the said provision is mandatory and, therefore, there is no other option but to dissolve the Panchayat.

11. In view of what is stated above, the petition is allowed. The matter is sent back to the Development Commissioner for reconsideration. The Development Commissioner may consider the facts and circumstances of the case as well as the explanation given by the Panchayat. While considering the aforesaid matter afresh, the Development Commissioner also may take into account the fact that the concerned Panchayat was elected only a few months back and whether in the facts and circumstances of the case, the explanation given by the Panchayat is required to be accepted or not. Since the Commissioner has not decided the matter on merits, after considering the objections of the Panchayat and has passed the order of dissolution, considering the fact that it is mandatory for the Panchayat to pass budget within the stipulated time, in my view, there is no alternative but to remand the matter to the Development Commissioner for reconsideration of the entire matter afresh. It is clarified that it is for the Development Commissioner to arrive at a fresh decision on his own. The matter is required to be sent back as the Development Commissioner has not considered the contention of the Panchayat, as he was under the impression that the provision is mandatory. It is also clarified that this court has not expressed any opinion on the merits of the issue whether there was any justification on the part of the Panchayat for not passing the budget within the stipulated time. All these questions are required to be considered by the Development Commissioner after hearing the present petitioner.

Considering the aforesaid aspect of the matter, in my view, the non-passing of the budget itself would not, ipso facto, result in supersession of the Panchayat and the provision is directory and not mandatory. Further, in view of the judgment of a learned single Judge of this Court (Coram : J.M. Panchal, J.) and the judgment of the Division Bench of this Court, it cannot be said that the provision is mandatory. As aforesaid, since the Development Commissioner has not examined this

aspect on merits, the matter is sent back for reconsideration. The Development Commissioner may pass fresh order in accordance with law expeditiously. Since the order is set aside, the Development Commissioner will have to pass fresh order under the provisions of Section 253 of the Act and till such decision is taken, naturally, the elected body will be entitled to continue to function.

12. This petition is accordingly allowed to the aforesaid extent. The order of the Development Commissioner and the consequential order, appointing the Administrator, are quashed and set aside. The matter is remanded to the Development Commissioner for taking decision afresh. The Development Commissioner shall thereafter pass a fresh order after hearing the petitioner and after considering the material on record. Rule is made absolute accordingly with no order as to costs.

3rd October, 2002 (P.B. Majmudar, J.)

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(apj)